IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b))

Description of case

Criminal Appeal No. 25 of 2002 , decided on 12-09-2003

Satendra Singh Vs. State of Uttaranchal,
and another

A.F.R. (Approved for reporting)
~~Not approved for reporting~~

Date 12/9/2003 Initials of Judge

Note- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

Court No.3

Criminal Appeal No.25/ 2002

Satendra Singh S/o Govind Singh
R/o village Panduli, P.S. Karanpryag
District Chamoli. …. Appellants.

Vs.

State of Uttaranchal ….. Respondent.

Hon'ble P.C.Verma, J.
Hon'ble Irshad Hussain, J.

(Delivered by Hon'ble Irshad Hussain, J.)

The appellant Satendra Singh stand convicted and sentenced to undergo imprisonment for life under section 302 I.P.C. and three years rigorous imprisonment and a fine of Rs. 5000/- under section 307 I.P.C., per judgment and order dated 9-1-2002 passed by Sri Inderjeet Malhotra, the then Sessions Judge, Chamoli in session trial No. 21 of 1998.

(2). Briefly stated the prosecution case was that on 8-5-1998 marriage of sister of Dalbir Singh was scheduled to be solemnized in village Sonlai of Patwari Circle, Mangrauli, P.S. Karanprayag District Chamoli. At about 8.30 p.m. when the marriage procession was at a distance of about 100 meters from the bride's house, Satendra Singh son of Govind Singh resident of village Paduli who was one of the member of the marriage procession pulled off the cap of Surveer Singh of the bride's side. The mischief was objected to whereupon Narendra Singh resident of village Sunai gave a fist blow to Surveer Singh and at the same time Satendra Singh gave a knife blows in the abdomen of Rajbar Singh of village Sonali. Sulabh Singh then made an attempt to rescue the said victim but he was also given knife blows on the back by Satendra Singh. The occurrence was witnessed by Jaswant Singh among others. both the assailants Satendra Singh and Narendra Sinhg were however able to fled from there. The victim Rajbar Singh succumbed to his injuries at the spot itself whereas injured Sulabh Singh was shifted to hospital for medical aid and treatment. The incident was narrated to informant Diwan Singh Negi by Manbar Singh who got prepared written report, Ex.Ka.1, and filed it with the Patwari Circle at

6 a.m. on 9.5.1998. On its basis case crime No 3/1998 under sections 302/307 IPC was registered against the appellant and Narendra Singh.

(3). Investigation o the case was taken up by Cricle Patwari Bachan Singh (P.W.6) who reached the scene of the occurrence, recorded the statements of witnesses and held inquest on the dead body of Rajbar Singh. The packed and sealed dead body was dispatched for post mortem along with inquest report, Ex.Ka.6, diagram of the dead body, Ex.Ka.7, challan report, Ex.Ka.8 and relevant documents. Dr. R.N. Sah (P.W.8) conducted autopsy on the dead body of Rajbar Singh at 1.45 p.m. on 9-5-1998. The Investigating Officer then prepared the site plan of the scene of the occurrence and made search of the accused. Later on the investigation was entrusted to civil police by order of the District Magistrate, Chamoli S.H.O. Jagdish Sigh (P.W.7) of P.S. Karanprayag then took up the investigation. On completion of the investigation he submitted charge sheet, Ex.Ka.19, on 5.8.1998 against the appellant and Narendra Singh.

(4). In order to bring home guilt to the appellant and culprit Narendra Singh prosecution relied upon the evidence of eight witnesses. Of these witnesses P.W.1, informant Diwan Singh is not the eye witness of the occurrence. He lodged F.I.R., Ex.Ka.1, on the information of Manbar Singh.

(5). P.W.2, Surveer Singh is the eye witness of the occurrence. He was at the house of Dalbir Singh at about 8.30 p.m. on 8.5.1998 along with others to receive marriage party. Satendra Singh and injured Narendra Singh were among the members of the marriage party. He stated that Narendra Singh pulled off his cap. He objected to it but was given fist blow. When Rajbar Singh intervened Satendra Singh tool out a knife from his bag and gave its blow in the abdomen of Rajbar Singh. Sulabh Singh tried to pacify the assailant but he was also given knife blows on the back of Satendra Singh. Injured Rajbar Singh moved a little distance while holding his abdomen but fell down there and breathed his last. Narendra Singh also gave knife blow on the person of injured Sulabh Singh and thereafter both these assailants ran away from there.

(6). P.W.3, Jaswant Singh is another eye witness of the occurrence and he also supported the prosecution story by narrating the version almost similar to the one as given by the above witness. This witness was also cited in the written F.I.R., Ex.Ka.1.

(7). P.W.4 Sulabh Singh is the injured witness of the case. He corroborated the prosecution version as stated above. He was suggested that he could not see the assailants at the time of the occurrence and that he and victim Rajbar Singh were not assaulted by knife. He denied to these suggestions.

(8). P.W.5, Dr. Pradeep Kumar was posted as Medical Officer in C.H.C. Karanprayag. Injured Sulabh Singh was examined by him at 9.50 p.m. on 8.5.1998. The following injures were found on the person of the said injured:-

1. Incised wound on left side of back of chest, size about 2.5 cms. x 1 cm, long-deep i.e., sucking wound 6 cms below inferior angle of left scapula.
2. Incised wound, size 2cms x 1cm, muscle deep 2.5 cms lateral from mid-line and 3.5 cms medial from injury No.1.
   Surgical emphysema is present.

In his opinion these injuries were caused by sharp edged weapon such as knife at about 8.30 p.m. on that day and the injured was in a serious condition. He had referred the injured to district hospital for better management. He filed the certified extract of the medical examination and injuries as entered in the medico-legal register of the hospital and the same was proved as, Ex.Ka.2. He also proved the certified copy of the supplementary report, Ex.Ka.3, based on x-ray of injury No.1, which was grievous in nature.

(9). P.W.6, Bachan Singh Circle Patwari, as stated above, initially investigated the case. His evidence has been referred above, in brief, in the earlier part of the judgment. He also proved check F.I.R., Ex.Ka.4, copy of G.D. report of registration of case, Ex.Ka.5, site plan, Ex.Ka.11, memo of seizure of bag, Ex.Ka.12, memo of seizure of blood stained and plain earth. Ex.ka.13 and sample seals, Ex.Ka.14 and Ex.Ka.15.

(10). P.W.7, S.I. Jagdish Singh Aswal proved the steps which were taken by him in the investigation. Both culprits were arrested on 20-5-1998 and memo, Ex.Ka.16 was prepared. On their pointing knives were recovered at 4.30 p.m. and memo, Ex.Ka.17 was then prepared. He also prepared the memo of the place of recovery knives, Ex.Ka.18 and thereafter recorded the statements of witnesses. As stated above the charge sheet was submitted against the appellant and Narendra Singh on 5.8.1998. It is ,Ex.Ka.19 on the record.

(11). P.W.8, Dr. R.N.Shah performed post mortem on the dead body of Rajbar Singh at a1.45 p.m. on 9.5.1998 and prepared post mortem report, Ex.Ka.20. Following ante mortem injury was detected :-

> "Incised and penetrating wound 3cms x 1cm x cavity deep (18 cms) over right hypochondrium, 15 cms below the right nipple."

On internal examination abdominal cavity was found penetrated and peritoneum was perforated. Gall bladder was ruptured and congested due to penetrated wound. Both the chambers of the heard were empty.

In the opinion of the Medical Officer the death occurred due to shock and hemorrhage as a result of anti-mortem injury. He also testified that the death probably took place at about 4.30 p.m. on 8.5.1998.

(12). Both the appellant Satendra Singh and accused Narendra Singh did not admit the accusation of the prosecution. They stated that they have been falsely implicated in the case due to enmity.

(13). In defence G.D. report No.2 of 2 a.m. dated 9.5.1998 in regard to the return of Sub-Inspector Dharm Veer Singh was got proved in the cross examination of I.O., P.W.7 and the copy of the same was exhibited as Ex.Kha.1.

(14). The learned Sessions Judge scrutinized the evidence of the prosecution and found it reliable as regards the role of the assailant Satendra Singh in committing the murder of Rajbar Singh and attempt to commit murder of injured Sulabh Singh and accordingly convicted and sentenced him as mentioned above. Accused Narendra Singh was acquitted in view of his involvement not being proved beyond reasonable doubt.

(15). Heard Sri Rajendra Kotiyal, learned counsel for the appellant and learned G.A. for the State and we have carefully considered the evidence, the circumstances and the probabilities of the case.

(16). Defence has not disputed the fact that the death of Rajbar Singh deceased was homicidal. The time and place of the occurrence has also not been disputed by the defence. This is evident from the cross-examination of the prosecution witnesses and suggestions put to them and briefly referred above with regard to the statement of injured Sulabh Singh. As is the case the occurrence took-place sat about j8.30 p.m. on 8.5.1998 in village Sonali of Patwari Circle Mangrauli, P.S. Karanprayag District Chamoli, where the marriage of the sister of Dalbir Singh was to take place and the marriage

procession was about to reach his house. In the face of the facts of the case the prosecution was obliged to establish beyond doubt the manner in which the occurrence took place and also the identity of the assailant. As stated above the evidence of the prosecution witnesses on appraisal was found by the learned Sessions Judge reliable and sufficient to establish that appellant Satendra Singh was the assailant of the victims of the case.

(17). Learned counsel for the appellant in order to assail the conclusion drawn by the learned Sessions Judge drew attention to the evidence of the prosecution witnesses and submitted that it strongly probabilize the defence case that both the victims of the case have sustained injuries during a quarrel with the local boys and that the informant Diwan Singh (P.W.1) being the Pradhan of the village Sonali lodged the report based on concocted version in order to save his own son (Surveer Singh-P.W.2) who was also involved in the brawl. Having gone through the statement of informant we find nothing substantial as may even remotely indicate that he went out of fabricate a false story to implicate members of the marriage party with a view to save his son. Considering the time and place of occurrence and particularly the occasion when the marriage procession was about to arrive at the bridegrooms place in the presence of large number of village people those normally assemble to welcome the marriage party and the bridegroom, the possibly of concoction and fabrication of a story is completely ruled out.

(18). The evidence of Surveer Singh (P.W.2) was referred by the learned counsel for the appellant to bring home his point of view that any such occurrence as alleged had not taken place that day. Although the witness has fully supported the prosecution version, as stated above, but at the same time also assigned role for assailant to Narendra Singh by stating that one of the knife blow on the person of Sulabh Singh was given by this assailant. He had however been definite on the claim that when his cap was pulled off and some altercation took place the appellant Satendra Singh took out knife from the bag and gave a blow in the abdomen of victim Rajbar Singh. According to him Satendra Singh also assaulted and gave knife blows on the back of Sulabh Singh. It appear that role of assailant was alsoa assigned to Narendra Singh to implicate him also in the occurrence. On account of such an assertion alone his evidence as a whole could not have

been discarded and the submission to this effect of the learned counsel in our view is unwarranted.

(19). It was also submitted that the witness had seen the appellant Satendra Singh and his companion Narendra Singh for the first time in the marriage procession and they were seen by him on the second occasion in the court when the evidence was recorded and therefore his evidence in regard to the identity of the appellant as the assailant of the victims should not have been accepted. This submission also has no acceptability because the appellant was also named in the F.I.R. and also because it is in the evidence of the witness that the name of the said assailant was also disclosed by the father of the bride soon after the occurrence. When the witness had seen the appellant and was also told his name at the time of the occurrence and he was duly identified in court also question of raising any doubt in the claim of the witness about the identity of the appellant does not arise. In our view the evidence of this eye-witness amply establish the identity of the appellant as the assailant of the victims of the case and the learned Sessions Judge made no error in placing reliance on his evidence.

(20). The evidence of the other eye witness Jaswant Singh was also adversely commented upon by submitting that his evidence is highly shaky and discrepant because he has repeatedly assigned role of assailant to Narendra Singh. It need to be stated that the witness gave out that first of all appellant Satendra Singh gave knife blow in the abdomen of victim Rajbar Singh and when Sulabh Singh came to rescue of the said victim Sulabh Singh was given knife blow on the back by Narendra Singh and that thereafter Satendra Singh took the knife from Narendra Singh and gave blow on the back of the said injured Sulabh Singh. It appear that due to some confusion this witness gave out that Narendra Singh also wielded knife in the occurrence and it was due to the fact that Narendra Singh was involved in the altercation when the cap of Surveer Singh was pulled off and Narendra Singh even gave a fist blow to Surveer Singh. However the basic version of the witness about the role of the actual assailant appellant Satendra Singh is in conformity with the prosecution case and is also in corroboration to the evidence of other witnesses. Therefore the infirmity in the statement of the witness can not be termed as material effecting his

evidence in totality. In other words the evidence of this witness was also not liable to be disbelieved.

(21). Against most natural injured witness Sulabh Singh (P.W.4) it was submitted that his evidence also create doubt about the actual sequence of the events of the occurrence and the identity of the assailant. To support the contention attention was again drawn to the fact that this witness also attributed overt act to Narendra Singh. The witness at the same time was definite that appellant Satendra Singh first of all gave knife blow in the abdomen of Rajbar Singh and when he intervened to rescue the victim he was given knife blow on the back by the same assailant appellant Satendra Singh. Although he attributed another blow of knife on his back to Narendra Singh but it appear that as has been the case with other witnesses also, out of some confusion and involvement of Narendra Singh in the altercation the said overt act was attributed to him. On account of this minor infirmity the evidence of this injured witness also can not be said to be trustworthy and unreliable. It is well settled that it is the duty of the court to separate grain for chaff. Where chaff can be separated from grain, it would be open to the court to convict the accused notwithstanding the fact that the evidence has been found to be deficient to prove the involvement of other culprit. It is always open to court to scrutinize the evidence of witness of differentiate the actual culprit from those who have no involvement in the commission of crime and this is being done by sifting the evidence with care. Having done so in the light of the settled legal principle we are of the view that the evidence of the injured witness as well as two other eye witnesses P.W.2 and P.W.3 being cogent and definite with regard to the implication of the appellant in the commission of the crime, the learned Sessions Judge has rightly placed implicit reliance on their evidence has drawn the correct conclusion as mentioned in the earlier part of the judgment.

(22). Credibility of this witness was also sought to be discredited on the basis of G.D. report, Ex.Kha.1 relating to the return of Sub-Inspector Dharm Veer Singh from the C.H.C. Karanprayag were this witness was admitted soon-after the occurrence. In this report the Sub-Inspector on returns to Police Station made the entry to the effect that queries were made from injured Sulabh Singh about the incident but the injured did not name his assailant who gave knife blows on his back. Pointing out to this the

learned counsel for the appellant submitted that at the first available opportunity this injured witness has had no inkling about his assailant and his evidence assigning role to the appellant can not be termed as truthful and credible. Having considered the submissions it is stated at the out set that we find no substance in the argument. The reason is that this witness was confronted with the recital of the G.D. report but he categorically denied about the observations attributed through the Sub-Inspector. He gave out that he had not given any statement to the Sub-Inspector Dharam Veer Singh. The assertion of the witness appear to be true in view of the fact that he had sustained serious injuries in the incident as is evident from the medical evidence referred above and he was not supposed to be in a fit mental and physical condition to have responded to any query made at C.H.C. Karanprayag soon-after the occurrence. In this connection it is also to be mentioned that Medical Officer P.W.5 made definite assertion that this injured when examined at C.H.C. Karanprayag was in a serious condition and was thereafter referred to bigger hospital for the further management. This apart, the Sub-Inspector Dharam Veer Singh was not examined as a defence witness to corroborate the version of the G.D. report and to rebut the definite evidence of this injured witness. In a situation like this the G.D. report, Ex.Kha.1 can not be utilized to make any adverse impact on the credibility of the injured witness.

(23). The learned counsel for the appellant also argued that the statement of this injured witness was not recorded under section 161 of the Code of Criminal Procedure and the defence being prejudiced in testing his credibility by confronting the earlier statement, his evidence deserve to be discarded. The learned counsel placed reliance on a decision of the Apex Court in a criminal appeal of ***Bijoy Singh and another Vs. State of Bihar; 2002 Cri.L.J. 2623*** in support of the submission that even inordinate delay of nine days in recording the statement of injured witness of the case invited an inference of falsity of the evidence and rejection of the prosecution story. The facts of the reported case were at variance because no plausible explanation was given for delay in recording the statement of the injured witness and further that the evidence on oath in court did not repose confidence in his reliability. In the instance case the injured witness Sulabh Singh was subjected to comprehensive piercing cross-examination but he

stood the test and fully proved and corroborated the prosecution case that appellant Satendra Singh fatally assaulted Rajbar Singh and also gave him blows of knife with intention to commit his murder also. Further, the perusal of the case diary reveal that the statement by the I.O. could not be recorded because this witness was shifted to Army Hospital at Lucknow and when the I.O. reached there it was reported that the witness had been discharged and had reported at his place of posting. This was a sufficient cause that the statement could not be recorded. However looking to the lengthy cross-examination of the witness and also to the opportunity availed by the defence in confronting the witness with the G.D. report, Ex.Kha.1 it can not be safely accepted that the defence was in any way prejudiced due to non-recording of the statement of the witness under section 161 of the Code of Criminal Procedure. By virtue of the provisions of section 231 of the Code the court was obliged to record the statement of this injured witness in the course of trial of the sessions case. This witness right from the very beginning was shown to be the prosecution witness and the defence was not taken by surprise when he was examined as a witness in the trial. In other words the defence can not get any benefit on account of the above fact. More so, when the injured witness has stood the test of cross-examined to corroborate the prosecution version.

(24). The learned counsel for the appellant also argued that in the face of the facts of the case this G.D. report, Ex.Kha.1 has assumed the status of the first information report and since none of the assailant was named in it, the evidence of the prosecution became tainted and no implicit reliance can therefore be placed on it. It has come in the evidence of P.W.1 and P.W.2 that after the occurrence Circle Patwari, Sub-Divisional-Magistrate and Police Personnel have reached the village of the occurrence. The occurrence took place when marriage party was about to be welcomed at bride's house. In the incident Rajbar Singh a young boy of about 19 years had lost his life and Sulabh Singh a young army-man sustained grievous injuries and in a situation like this there was bound to be general resentment and feeling of revenge in the villagers where the marriage was to take place. On receiving information the above officials were bound to reach there to maintain the law and order and to prevent any further untoward happening in retaliation. As a corollary to this police personnel was also bound to visit

the C.H.C, Karanprayag and if on return to the Police Station a G.D. entry was made the same can not legally by treated to be a first information report of the incident. In a recent decision in the case of ***Thaman Kumar Vs. State of Union Territory of Chandigarh; 2003 A.I.R. S.C.W. 2837,*** the Apex Court refused to treat telephonic message about the incident given by constable on night petrol duty as a first information report of the incident. In the reported case the constable had mentioned that three persons assaulted the deceased and made requests for sending police force. This information was not treated as an F.I.R. of the incident but merely an entry made regarding the departure of police personnel to the place of occurrence. Non mentioning of names of assailants in this entry, therefore was not found fatal. The broad aspects of the instant case are not much different and in the totality of the circumstances of the case of G.D. report, Ex.Kha.1 is not the first information report of the incident and further that the written F.I.R., Ex.Ka.1 proved by P.W.1 also can not be said to be a fabricated document. Presence of officials in the village can not be taken to accept the contention of the learned counsel for the appellant that the F.I.R. was result of deliberations and appellant and another were falsely roped in the case.

(25). The F.I.R. of the case was lodged next morning i.e. on 9-5-1998 at 6 a.m. The learned counsel for the appellant submitted that there being considerable delay which is not explained about lodging of the F.I.R., the same become doubtful and its genuineness stand shaken telling upon the prosecution version. There is nothing in the statement of P.W.1 which may indicate that there was any deliberation and consultation in regard to the preparation of the written F.I.R. The manner in which the incident took place, it has created unusual situation. On young boy has lost his life and another in serious condition was admitted in hospital and in a situation like this the village people and even the Pradhan (P.W.1) were more concerned to maintain peace in the village and also to take care of the victims and if the F.I.R. could not be lodged in the late hours of the night after the occurrence it can not be said that the delay was deliberate and time was taken to concoct a story. It is well settled that the delay in giving the F.I.R. by itself can not be a ground to doubt the prosecution case. Knowing the Indian conditions particularly in the remote hill areas of the State of Uttaranchal, as they are, it can not be accepted that the villagers will immediately rush to the Circle

Patwari or the Police Station to file a first information report of the incident. Delay in F.I.R. assumes significance only when some incident took place as a result of party faction and long standing enmity between the opposite factions. When relations are greatly strained due to party faction and other village rivalries then there is a tendency to falsely implicate members of the opposite group and in order to avert the danger of convicting innocent persons the emphasis has been that the delay in lodging an F.I.R. raise dout in the veracity of the prosecution story. In the instant case the situation was altogether different in as much as a marriage was schedule to be solemnized, and marriage procession was about to be welcomed at the bride's place. There was absolutely no element of any previous animosity between the villagers of the bride-groom's side on the one hand and bride's village on the other hand and therefore the delay in lodging of the F.I.R. or the case has no telling effect on the veracity of the prosecution version. In fact the F.I.R. corroborate the evidence of the prosecution witnesses referred above and the same can not be viewed with any suspicion.

(26). The prosecution did not examine Manbar Singh in evidence. He was the person who narrated the incident to informant Diwan Singh (P.W.1) who in turn lodged the F.I.R., Ex.Ka.1. The learned counsel cited the decision of Supreme Court in the case of ***Kanhai Mishra alias Kanhaiya Misar Vs. State of Bihar; 2001 Cri.K.J. 1259*** in support of the argument that non-examination of material witness how first informed the informant about the incident is fatal to the prosecution. The facts of the reported case were at a variance because the case of rape and murder was based on circumstantial evidence and the person who had seen the culprit and the deceased and gave information to the informant was not produced in evidence and in a situation like this the non-examination of this material witness was found to adversely effect the veracity of the prosecution version. In the instant case there was direct evidence and the eye-witnesses as well as the injured witness were produced in the trial by the prosecution and therefore non-examination of Manbar Singh in evidence is of no consequence so far as the proof of the prosecution case is concerned. We therefore discard the above argument also of the learned counsel.

(27). There can be no gain saying that the medical evidence as referred above has fully corroborated the prosecution case and the evidence

of the witnesses and this aspect of the matter was also considered in proper perspective by the learned Sessions Judge.

(28). The investigation of the case was also made subject matter of the criticism by submitting that blood-stained earth seized from the scene of the incident was not sent for chemical examination and this create suspicion about the prosecution case. As stated above the defence has not disputed the place of the occurrence e and therefore this omission ceased to have any significance so far as the veracity of the prosecution case is concerned. No material infirmity or lacuna in the investigation of the case could further been pointed out so as to raise any grave doubt in the prosecution case as a whole.

(29). The deceased Rajbar Singh had sustained a solitary knife injury and the same had proved fatal for him. The question which arises for consideration is to whether the appellant had the intention to cause the death and also to attempt to commit murder of injured Sulabh Singh or the case fall within the ambit of Exception-4 of section 300 of the Indian Penal Code. The occurrence took place when the marriage procession was about to be welcomed at bride's house. The appellant was the member of the marriage party and whereas both the victims were from the bride's side. On such an occasion members of both the parties normally are in festive and hilarious mood. The cause of altercation was the joke in the matter of pulling off the cap of Surveer Singh by the appellant. The joke was not taken in a sporting spirit and it developed into some altercation and in the process appellant took out a knife and stabbed deceased Rajbar Singh in abdomen. He thereafter did not act in cruel and unusual manner to give another blow of knife on the person of the deceased even though the deceased was in helpless position. It therefore could safely be said that in the heat of passion upon a sudden quarrel and altercation the appellant gave knife blow at random without any pre-meditation. In the circumstances we are of the view that the appellant had no intention to cause death of the deceased but his act was with the intention of causing such bodily injury as is likely to cause death and his case is covered by Exception –4 of section 300 I.P.C. which is punishable under section 304 (Part-I) I.P.C. Consequently the conviction and sentence on this count need to be modified from section 302 to 304(Part-I) I.P.C.

(30). Likewise the injured Sulabh Singh was not assaulted with the intention to commit his murder and the case of the appellant in the peculiar circumstances as mentioned above with regard to this act will fact within the ambit of voluntarily causing grevious hurt punishable under section 326 I.P.C. and consequently the conviction and sentence for offence under section 307 I.P.C. need to be converted to section 326 I.P.C.

(31). For the above reasons and discussions we find ourselves in full agreement with the conclusion drawn by the learned Sessions Judge in regard to the credibility of the prosecution version and trustworthiness of its witnesses. However we are of the view that the appellant Satendra Singh, as stated above was liable to be held guilty of committing culpable homicide not amounting to murder punishable under section 304 (Part-I) I.P.C. instead of section 302 I.P.C. for causing death of victim Rajbar Singh and was further liable to be held guilty of committing the offence of voluntarily causing grevious hurt to injured Sulabh Singh instead of section 307 I.P.C. The sentences for these offences are therefore to be awarded modifying the sentences as given by the learned Sessions Judge.

(32). In view of above, the appeal partly succeed and is allowed accordingly. The conviction and sentences as awarded against the appellant Satendra Singh by the learned Sessions Judge per judgment and order dated 9-1-2002 are modified and the appellant Satendra Singh is hereby convicted and sentenced to undergo rigorous imprisonment for 10 (ten) years under section 304(Part-I) I.P.C. and convicted and sentenced to undergo rigorous imprisonment for 7 (seven) years under section 326 I.P.C. Both the sentences shall run concurrently. The appellant is in jail. He shall serve out his sentences awarded against him.

(33). Let the record of the case be sent back to the court concerned for necessary compliance.

(Irshad Hussain, J.) (P.C.Verma, J.)

Dated: 12-09-2003

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